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different from those involving a tax imposed on transfers to take effect in possession after the grantor's death made by a deed executed subsequent to the statute. *In re Keeney's Estate*, 104 N. Y. 281, 87 N. E. 428; *In re Brandeth*, 169 N. Y. 437, 62 N. E. 563. In these cases no interest at all becomes vested before the enactment of the statute.

TORTS — NEGLIGENCE — LIABILITY OF A MANUFACTURER. — In a suit against a manufacturer and distributor of chewing tobacco by a consumer who contracted ptomaine poisoning therefrom, owing to a foreign substance concealed in the plug of tobacco, *held*, that the manufacturer was liable. *Pillars v. R. J. Reynolds Tobacco Co.*, 78 So. 365 (Miss.).

The principle that a manufacturer is not liable for negligence to a subvendee is based upon an erroneous interpretation of *Winterbottom v. Wright*, 10 M. & W. 109. That case was decided upon a question of pleading and stands for no such proposition. 29 HARV. L. REV. 867. So numerous are the exceptions to the general rule in favor of foods, drugs and articles imminently dangerous to human life, and so varied are the opinions as to what is imminently dangerous, that the exceptions might be said to be the rule itself. *Tomlinson v. Armour & Co.* 75 N. J. L. 748, 65 Atl. 883; *Bishop v. Weber*, 139 Mass. 411, 1 N. E. 154; *Johnson v. Cadillac Motor Co.*, 137 C. C. A. 279, 221 Fed. 801; *Loose v. Clute*, 51 N. Y. 494, 10 Am. Rep. 638; *Shubert v. R. J. Clark & Co.*, 49 Minn. 331, 51 N. W. 1103. That the duty of due care should be imposed only on manufacturers of foods, drugs and articles imminently dangerous to human life is illogical. If the duty exists, it ought to apply equally to all manufacturers. See CLERK & LINDSELL, TORTS, 6 ed., 513. Such was the view taken in *McPherson v. The Buick Motor Co.*, 217 N. Y. 382, 111 N. E. 1050. The principal case in adopting the same view as to the manufacturer and in dismissing the case as to the distributor is well decided. There was no negligence on the distributor's part in failing to discover a foreign substance concealed in the plug or sealed package of tobacco. *Julian v. Launbenberger*, 16 Misc. (N. Y.) 646, 38 N. Y. Supp. 1052; *Bigelow v. Maine Cent. R. Co.*, 110 Me. 105, 85 Atl. 396.

TRUSTS — CREATION AND VALIDITY — PRECATORY WORDS — GIFT TO EXECUTORS FOR SECRET PURPOSES. — A testator gave the residue of his estate to his executors and trustees, "in whose honesty and discretion I have reposed special trust and confidence, for certain purposes which I have made known to them, and I hereby authorize and empower my said executors to make such distribution and division of my estate as I have indicated to them, and as they shall deem proper for the fulfillment of my wishes so well known to them, relying entirely upon their judgment in the premises." *Held*, that a trust was created, and that the property resulted to the heirs at law and next of kin of the testator. *Blunt v. Taylor*, 119 N. E. 954 (Mass.).

Where there is a gift by will to a person, followed by precatory words in favor of other persons, modern courts tend against imposing a trust. *In re Digges*, 39 Ch. D. 253; *Lemp v. Lemp*, 264 Mo. 533, 175 S. W. 618. See UNDERHILL, TRUSTS AND TRUSTEES, 7 ed., 16. But in the principal case the gift is to the executors and trustees, not beneficially, but "for certain purposes which I have made known to them." The phrase, "relying upon their judgment in the premises" defines the manner of executing the trust and leaves the executors no option to refuse performance. The existence of a trust, therefore, appears on the face of the will, and, by the weight of authority, extrinsic evidence is admissible to prove the terms thereof. *In re Huxtable*, [1902] 2 Ch. 793, 71 L. J. Ch. 876, 87 L. T. 415; *Morrison v. M'Ferran*, [1901] 1 I. R. 360, 35 I. L. T. R. 81. See COSTIGAN, CONSTRUCTIVE TRUSTS, 28 HARV. L. REV. 383, n. Even where the existence of a trust does not appear on the face of the will such extrinsic evidence is admissible. *Russell v. Jackson*, 10

Hare, 204; *Caldwell v. Caldwell*, 7 Bush (Ky.) 515. See 1 JARMAN, WILLS, 6 ed., 910. The authorities thus violate the purpose of the Wills Act and Statute of Frauds by opening the door to perjured testimony. In Massachusetts, however, if the existence of a trust appears on the face of the will the terms of the trust must appear thereon. *Olliffe v. Wells*, 130 Mass. 221; *Wilcox v. Attorney-General*, 207 Mass. 198, 93 N. E. 599. This condition was not complied with in the principal case, and so the property resulted to the heirs at law and next of kin.

BOOK REVIEWS

AMERICAN CITY PROGRESS AND THE LAW. By Howard Lee McBain, Dorman B. Eaton Professor of Municipal Science and Administration in Columbia University. The Hewitt Lectures for 1917. New York: Columbia University Press. 1918. pp. viii, 269.

An interesting and suggestive book for a lawyer, because it is the result of long thought and investigation of problems of municipal government. The city is doing so many things now-a-days that it is pretty hard to convince oneself that it should not do everything worth doing. But then, the same thing might be said about the state and the nation; the college and the public-school system; the rich man and the endowed charity. Our appreciation of all that may be done to make life fuller, and happier, and better, has come upon us so suddenly that we have not yet had time to study our means of action, to co-ordinate, to discriminate, to set the bounds of action for the various agencies to which we look for improvement.

As the need is more insistent in our cities, it is natural to look to our city governments for first aid. Is the city ugly? Let the city council, with its high appreciation of æsthetics, beautify it. Is the housing inadequate? Let the public treasury build model tenements. Do the grocers overcharge? Let the Committee on Water Supply take over their business. Do we need a big theatre, that won't pay, in the business section? Let the city exercise its power of eminent domain, take a site, and subsidize a picture show; the public needs amusement. Is the Board of Trade slow about getting in factories and big business? Let the Mayor advertise factory sites, bargain for inducements, and open an employment office.

This is human nature. We all like to hand these problems over to the city; and our cities solve them surprisingly well, considering. But as a result difficult legal questions of the power to deal with them set a new generation to revolving problems of strict and of liberal construction, and again the solution becomes a question of temperament with courts and lawyers. The progressives are again liberal and the conservatives, narrow constructionists. And again the progressives are bound to succeed.

Professor McBain is a progressive. His creed appears to be that the burden of proof is upon those who deny a city's legal power to do a useful thing. In these lectures he discusses in successive chapters the new occasions for municipal activity: Home Rule, Smoke and Billboards, City Planning, Municipal Ownership, Regulation of Prices, Public Recreation, Promotion of Commerce and Industry. His knowledge of the problem is adequate, his collection of authorities is full, his arguments are interesting; a student of municipal law finds occasion for gratitude in every page. Though narrow in scope and simple in treatment, the book is a contribution to legal as well as to governmental science.

If Professor McBain's point of view had been that of a lawyer, he might have